

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Robert Frederick,

Plaintiff,

VS.

Federal National Mortgage Association, *et al.*,

Defendants.

Case No.: 2:11-cv-00522-GMN-CWH

ORDER

Before the Court is *pro se* Plaintiff Robert Frederick’s “Motion for Issuance of an Emergency Temporary Restraining Order to Stay the Repossession [sic] of Real Property; and Imposition of Permanent Injunctive Relief Barring the Repossession [sic] of the Real Property by Defendants.” (ECF Nos. 37, 38.) Defendants Federal National Mortgage Association (“Fannie Mae”) and Aurora Loan Services, LLC, (“Aurora”) (collectively, “Moving Defendants”) have filed an Opposition (ECF No. 39). Also before the Court is Plaintiff’s “Motion for Enlargement of Time” (ECF No. 40) requesting an extension of time to reply to Moving Defendants’ Opposition.

I. BACKGROUND

On April 18, 2012, the Court granted Moving Defendants' Motion to Dismiss and gave Plaintiff leave to file an amended complaint by May 14, 2012. (Order, ECF No. 18.) Plaintiff later filed a motion requesting enlargement of time to file first amended complaint (ECF No. 21), and the Court granted the motion, giving Plaintiff leave to file his amended complaint by August 3, 2012. (ECF No. 22.) Plaintiff filed an Amended Complaint (ECF No. 23) on August 3, 2012, to which Defendants MERSCORP, Inc., and Mortgage Electronic Registration Systems, Inc. filed an Answer (ECF No. 25) on August 20, 2012. On September 26, 2012,

1 Plaintiff filed a Motion for Entry of Clerk's Default (ECF No. 26) as to Moving Defendants and
2 Defendants Cal-Western Reconveyance Corp., and Centex Mortgage Services, which was
3 subsequently entered by the Clerk (ECF No. 28). After Plaintiff filed a Motion for Default
4 Judgment (ECF No. 29), Moving Defendant then filed a Motion to Set Aside Clerk's Entry of
5 Default (ECF No. 31), to which Plaintiff's opposition is due December 3, 2012 (ECF No. 36).

6 **II. LEGAL STANDARD**

7 Federal Rule of Civil Procedure 65 governs preliminary injunctions and temporary
8 restraining orders, and requires that a motion for temporary restraining order include "specific
9 facts in an affidavit or a verified complaint [that] clearly show that immediate and irreparable
10 injury, loss, or damage will result to the movant before the adverse party can be heard in
11 opposition," as well as written certification from the movant's attorney stating "any efforts
12 made to give notice and the reasons why it should not be required." Fed. R. Civ. P. 65(b).

13 Temporary restraining orders are governed by the same standard applicable to
14 preliminary injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181
15 F.Supp. 2d 1111, 1126 (E.D. Cal. 2001). Furthermore, a temporary restraining order "should
16 be restricted to serving [its] underlying purpose of preserving the status quo and preventing
17 irreparable harm just so long as is necessary to hold a hearing, and no longer." *Granny Goose*
18 *Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974).

19 A preliminary injunction may be issued if a plaintiff establishes: (1) likelihood of
20 success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3)
21 that the balance of equities tips in his favor; and (4) that an injunction is in the public interest.
22 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "Injunctive relief [is] an
23 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is
24 entitled to such relief." *Id.* at 22. The Ninth Circuit has held that "'serious questions going to
25 the merits' and a hardship balance that tips sharply toward the plaintiff can support issuance of

1 an injunction, assuming the other two elements of the *Winter* test are also met.” *Alliance for the*
2 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011).

3 **III. DISCUSSION**

4 Here, Plaintiff’s request for temporary restraining order, filed on October 29, 2012, fails
5 to include “specific facts in an affidavit or a verified complaint [that] clearly show that
6 immediate and irreparable injury, loss, or damage will result to the movant before the adverse
7 party can be heard in opposition.” Plaintiff submits copies of documents purportedly from
8 North Las Vegas Justice Court and states that an eviction order is included, but the only
9 documents attached appear to be a Notice to Appear and an Order to Show Cause scheduling a
10 hearing on October 15, 2012. In subsequent filings, Plaintiff represents that he and his family
11 were evicted on November 7, 2012. (*See* Mot. for Enlargement of Time, ECF Nos. 40, 41.)
12 These facts require the Court to deny Plaintiff’s request for a temporary restraining order, both
13 for failure to satisfy his burden to establish a likelihood of irreparable harm in the absence of
14 preliminary relief, and for apparent mootness.

15 Furthermore, Plaintiff has failed to satisfy his burden to establish a likelihood of success
16 on the merits, or serious questions going to the merits. Therefore, the Court cannot grant
17 Plaintiff’s request for injunctive relief. Additionally, Plaintiff’s request for injunctive relief
18 also appears to be rendered moot based on his representations to the Court as to his family’s
19 eviction.

20 Plaintiff’s “Motion for Enlargement of Time” (ECF No. 40) requesting additional time
21 to reply to Defendants’ Opposition is unnecessary and moot, since the Court must deny
22 Plaintiff’s requests for injunction even before considering or relying upon Defendants’
23 Opposition. Accordingly, this motion for enlargement of time will be denied, as well.

24 Plaintiff is permitted to re-file a Motion for Preliminary Injunction if he can show that
25 such a request is not rendered moot by his eviction, and if he is able to satisfy the requirements


1 of Federal Rule of Civil Procedure 65 and *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S.
2 7, 20 (2008) ((1) likelihood of success on the merits; (2) likelihood of irreparable harm in the
3 absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an
4 injunction is in the public interest) or *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
5 1132 (9th Cir. 2011) (“‘serious questions going to the merits’ and a hardship balance that tips
6 sharply toward the plaintiff can support issuance of an injunction, assuming the other two
7 elements of the *Winter* test are also met”).

8 **IV. CONCLUSION**

9 **IT IS HEREBY ORDERED** that Plaintiff’s “Motion for Issuance of an Emergency
10 Temporary Restraining Order to Stay the Repossession [sic] of Real Property; and Imposition of
11 Permanent Injunctive Relief Barring the Repossession [sic] of the Real Property by Defendants”
12 (ECF Nos. 37, 38) is **DENIED**.

13 **IT IS FURTHER ORDERED** that Plaintiff’s “Motion for Enlargement of Time” (ECF
14 No. 40) is **DENIED**.

15 **DATED** this 16th day of November, 2012.

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Gloria M. Navarro
United States District Judge